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August 4, 2015

VIA ECF

Hon. Andrew J. Peck, U.S.M.J.
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: Rio Tinto plc v. Vale S.A., et al., Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Peck:

We represent Vale in the above-captioned action. We write to correct a misrepresentation to the Court made by Plaintiff Rio Tinto at the last conference. At the July 28, 2015 conference, Vale represented that there were no documents supportive of Rio Tinto's allegation that it and BSGR formed a conspiracy to deprive Rio Tinto of its interests in Simandou in 2008 (when BSGR obtained those rights) or 2009 (when, according to Rio Tinto, the award of those rights was confirmed). Counsel for Plaintiff Rio Tinto responded that there existed documents produced by Vale in discovery that are "supportive of our allegations." It pointed to a single document:

[T]here is a document that they produced, we only have the document, a draft mineral development agreement that refers to the use of Liberia for the exportation of iron ore from Guinea, and it is an agreement involving BSGR and Vale that's dated four months after the deal, the negotiations between Rio Tinto and Vale [cratered]" in June 2009.

July 28, 2015 Tr. 23:19-24. In other words, Rio Tinto claimed there was a draft agreement between Vale and BSGR concerning export of Simandou iron ore through Liberia in October 2009.

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That representation was false. In response to Vale's inquiry, Rio Tinto has admitted that the document to which it was referring was the document Bates-stamped VALE-Training_00002374. The document is a markup of a publicly available "model" or template "Mineral Development Agreement" used by the Liberian Government, and made readily available on the Internet.¹ It does not contain any of Rio Tinto's purported trade secrets or any information about how BSGR obtained its interest in Simandou. More important, the document is not from October 2009, as Rio Tinto represented. It is from September 2010, as is readily apparent both from the email to which it is attached and from the metadata for both that email and for the document itself, which bear dates of September 2010.² Moreover, while Vale expects that Rio Tinto will respond that the template itself bears a legend "DRAFT- November, 2009," the parent email and metadata show that the document dates from 2010. So does other email evidence now in the possession of Rio Tinto that shows that Vale obtained the template in May 2010 (shortly after the joint venture) from a representative of the Government of Liberia – which "provided a soft copy of the standard MDA that he asserts should be the basis of the draft of a term sheet." *See* VALE-RT_00160251.³

The one-year difference is significant. As Vale has long maintained, Rio Tinto's allegations of a 2008 conspiracy are fiction: there was no agreement between Vale and BSGR and Vale and BSGR did not begin to work together until they formed a publicly-announced joint venture in April 2010 – one month before Vale and BSGR obtained the template. The two did not cooperate to obtain for BSGR the rights to Simandou – which BSGR acquired in 2008. The accurate date on the document demonstrates the truth of Vale's point – it was created (as one would expect) after the joint venture between Vale and BSGR on April 30, 2010 and long after the end of the Vale-Rio Tinto negotiations (which ended 14 months earlier).

Finally, Rio Tinto cannot claim its misrepresentation was a mistake. It knew before the conference that whether discovery to date supported its claims would be at issue, as Vale raised that issue in the joint letter in response to Rio Tinto's purported complaints about Vale's production. *See* Dk. 304 at 22 ("Rio Tinto's real complaint seems to be that the documents Vale has produced do not support Rio Tinto's theory of the case."). And while it claimed at the conference that it "only [had] the document," and that "what we don't have are emails related to this document beforehand, correspondence related to this document," July 28, 2015 Tr. 23:19-24:3, that statement too was untrue – it had the parent email that demonstrated the falsity of its claim.⁴

¹ A version of the template can be located via a simple Google search: <http://www.sdsg.org/wp-content/uploads/2011/06/liberiadevelopmentagreementtemplate.pdf>

² *See* VALE-RT_00055863 and VALE-RT_00055866. The document in question had been produced by Vale twice before the conference – once as part of Vale's Training Set as a standalone document (VALE-Training_00002374), in accordance with the Predictive Coding Protocol, and once complete with its parent email (VALE-RT_00055866). Rio Tinto knew they were the same document due to the text and metadata.

³ Vale has expedited production of this document in response to Rio Tinto's misrepresentation to the Court.

⁴ Moreover, when Vale asked Rio Tinto about this document following the conference, it tried to conceal these misrepresentations from Vale. Vale asked Rio Tinto to provide the Bates number of the document, and Rio Tinto replied that it was "VALE-Training_00055863." Vale pointed out that no document with that bates number existed and asked if counsel was mistaken. Rio Tinto responded: "Yep, total typo. . . . It's VALE-Training_00002374." It was not a "total typo." The Bates number initially provided was in fact the Bates number for the *September 2010*

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Respectfully submitted,

/s/ Lewis J. Liman

Lewis J. Liman

cc: All counsel of record (via ECF)

parent email to the model agreement – only with a different Bates prefix (VALE-*Training*_00055863 instead of VALE-*RT*_00055863). Rio Tinto's ham-fisted attempt at concealment only demonstrates its chicanery.